

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAVERNE MCBRYDE-O'NEAL,

Plaintiff,

-against-

DETECTIVE POLICHETTI; and
JOHN DOE DEA,

Defendants.

23-CV-10113 (JPC)(RFT)

ORDER OF SERVICE

ROBYN F. TARNOFSKY, UNITED STATES MAGISTRATE JUDGE:

Plaintiff, who is appearing pro se, brings this action under the Court's federal question jurisdiction, alleging that Defendants violated her federal constitutional rights. By order dated December 1, 2023, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees.

DISCUSSION

A. Service on Detective Polichetti

Because Plaintiff has been granted permission to proceed IFP, she is able to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the Court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).¹

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and the complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

To allow Plaintiff to effect service on Defendant New York City Police Department Detective Polichetti, Shield #7182, through the U.S. Marshals Service, the Clerk of Court is respectfully requested to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this Defendant. The Clerk of Court is further requested to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this Defendant.

If the complaint is not served within 90 days after the date the summons is issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if her address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. *Valentin* Order

Under *Valentin v. Dinkins*, a pro se litigant is given assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies enough information to permit the United States Drug Enforcement Administration (“DEA”) to identify the DEA agent or agents that participated in the search of her apartment on January 4, 2023. It is therefore ordered that the United States Attorney’s Office, which is the attorney for and agent of the DEA, must find out the identity and badge number of each John Doe whom Plaintiff seeks to sue and the address where each John Doe may be served. The United States Attorney’s Office must provide this information to Plaintiff and the Court by February 13, 2024, which is sixty days from the date of this order.

Within thirty days of being told the identities of the Doe Defendant(s), Plaintiff must file an amended complaint naming them in the amended complaint. The amended complaint will be a replacement for and not an addition to the original complaint. This means that any information in the original complaint, but not the amended complaint will not be considered part of the amended complaint.

An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed the amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and to deliver all documents necessary to effect service to the U.S. Marshals Service.

CONCLUSION

The Clerk of Court is respectfully requested to issue a summons for Defendant New York City Police Department Detective Polichetti, Shield #7182, complete the USM-285 forms with the address for this Defendant, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is respectfully requested to mail a copy of this order and the complaint to the United States Attorney's Office at: 86 Chambers Street, New York, New York 10007. An "Amended Civil Rights Complaint" form is attached to this order.

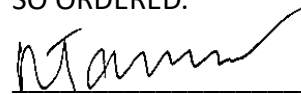
Plaintiff may choose to receive Court documents by email by completing the attached form, [Consent to Electronic Service](#), but she is not required to do so. If Plaintiff consents to receive court documents by email, Plaintiff will no longer receive Court documents by regular mail.

The Clerk of Court is respectfully requested to mail an information package to Plaintiff.

If the Plaintiff has questions about the following order or any procedural matters, she should contact the Court's Pro Se Intake Unit at (212) 805-0175, or the independent NYLAG Legal Clinic for Pro Se Litigants in the SDNY at (212) 659 -6190.

DATED: December 18, 2023
New York, NY

SO ORDERED.

A handwritten signature in black ink, appearing to read 'RTarnofsky', written over a horizontal line.

ROBYN F. TARNOFSKY
United States Magistrate Judge

DEFENDANT AND SERVICE ADDRESS

Detective Polichetti, Shield #7182
New York City Police Department, 25th Precinct
120 E. 119th Street
New York, NY 10035

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

____ Civ. _____ (____)

**AMENDED
COMPLAINT**

Jury Trial: ☐ Yes ☐ No
(check one)

I. Parties in this complaint:

- A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

- B. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 2 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 3 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

Defendant No. 4 Name _____
 Street Address _____
 County, City _____
 State & Zip Code _____
 Telephone Number _____

II. Basis for Jurisdiction:

Federal courts are courts of limited jurisdiction. Only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount in damages is more than \$75,000 is a diversity of citizenship case.

A. What is the basis for federal court jurisdiction? *(check all that apply)*

☐ Federal Questions

☐ Diversity of Citizenship

B. If the basis for jurisdiction is Federal Question, what federal Constitutional, statutory or treaty right is at issue? _____

C. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party?

Plaintiff(s) state(s) of citizenship _____

Defendant(s) state(s) of citizenship _____

III. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. Where did the events giving rise to your claim(s) occur? _____

B. What date and approximate time did the events giving rise to your claim(s) occur? _____

C. Facts: _____

What
happened
to you?

Who did
what?

Was anyone
else
involved?

Who else
saw what
happened?

IV. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. _____

CONSENT TO ELECTRONIC SERVICE

I hereby consent to receive electronic service of notices and documents in my case(s) listed below. I affirm that:

1. I have regular access to my e-mail account and to the internet and will check regularly for Notices of Electronic Filing;
2. I have established a PACER account;
3. I understand that electronic service is service under Rule 5 of the Federal Rules of Civil Procedure and Rule 5.2 of the Local Civil Rules, and that I will no longer receive paper copies of case filings, including motions, decisions, orders, and other documents;
4. I will promptly notify the Court if there is any change in my personal data, such as name, address, or e-mail address, or if I wish to cancel this consent to electronic service;
5. I understand that I must regularly review the docket sheet of my case so that I do not miss a filing; and
6. I understand that this consent applies only to the cases listed below and that if I file additional cases in which I would like to receive electronic service of notices of documents, I must file consent forms for those cases.

Civil case(s) filed in the Southern District of New York:

Please list all your pending and terminated cases to which you would like this consent to apply. For each case, include the case name and docket number (for example, John Doe v. New City, 10-CV-01234).

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address

Date

Signature